

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment)	NOTICE OF PUBLIC HEARING ON
of ARM 24.156.1601, 24.156.1604,)	PROPOSED AMENDMENT,
24.156.1625, the proposed adoption of)	ADOPTION AND REPEAL
NEW RULES I-VII, and the proposed)	
repeal of ARM 24.156.1603, 24.156.1605,)	
24.156.1606, 24.156.1607, 24.156.1608,)	
24.156.1609, 24.156.1610, 24.156.1611,)	
24.156.1612, 24.156.1613, 24.156.1614,)	
and 24.156.1615, pertaining to physician)	
assistant licensure)	

TO: All Concerned Persons

1. On March 23, 2006, at 1:00 p.m., a public hearing will be held in room 489 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry (Department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners (Board) no later than 5:00 p.m., on March 17, 2006, to advise us of the nature of the accommodation that you need. Please contact Evie Martin, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2364; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsmed@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2005 Montana Legislature enacted Chapter 519, Laws of 2005 (House Bill 737), an act generally revising the licensure and regulation of physician assistants. The bill was signed by the Governor on April 28, 2005, and became effective October 1, 2005.

The Board determined it is reasonably necessary to amend and repeal certain existing rules and to adopt New Rules I-VII to timely implement the 2005 legislation. The amended and new rules will function as guidelines for the licensure, conduct and supervision of physician assistants. It is necessary to repeal certain rules to avoid repetition and to update and further simplify the rules.

The rule changes are reasonable and necessary in keeping with the 2005 Montana Legislature's intent to simplify and streamline the licensure application processes for all licensees within the Department and to update Montana's administrative rules regarding physician supervision of physician assistants to reflect national trends in the field. Where additional specific bases for a proposed action exist, the Board will identify those reasons immediately following that rule. Authority and implementation cites are amended throughout to accurately reflect all statutes

implemented through the rules, to provide the complete sources of the Board's rulemaking authority and to delete references to repealed statutes.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.156.1601 DEFINITIONS As used in this subchapter the following definitions apply:

(1) ~~"Applicant" means a person seeking to practice as a physician assistant-certified.~~

(2) ~~"Department" means the Montana department of labor and industry provided for in 2-15-1701, MCA.~~

(3) ~~"License" means that authorization granted by the board of medical examiners to a physician assistant-certified to practice in the state of Montana.~~

(4) ~~"Licensee" means a physician assistant licensed to practice in the state of Montana.~~

(5) ~~"Remote site" means a site other than the supervising physician's customary place(s) of practice.~~

(6) ~~"Supervising physician" means a person licensed under Title 37, chapter 3, MCA, who is authorized by the board to supervise the practice of a physician assistant-certified.~~

(1) "Direct supervision" means the supervisor is within technologically unassisted audible and visible reach of the person being supervised.

(3) "Nonroutine application" means an initial physician assistant license application and/or supervision agreement where the supervising physician has never supervised a Montana licensed physician assistant and/or the physician assistant has never practiced in the state of Montana. A nonroutine application shall require a teleconference interview with a current board member.

(4) "Onsite supervision" means the supervisor must be in the facility and quickly available to the person being supervised.

(5) "Routine application" means a supervision agreement where the supervising physician and the physician assistant both have had approved Montana supervision agreements or utilization plans in the past. These applications shall be processed and approved by board staff.

(7) (2) "Supervision" "General supervision" means accepting responsibility for, and overseeing the medical services of, a physician assistant-certified assistant by telephone, radio, or in person as frequently as the board shall determine is necessary considering the location, nature of practice, and experience of the physician assistant-certified assistant, and the supervising physician. Unless otherwise specified by the board, the constant physical presence of the supervising physician is not required.

(8) ~~"Utilization plan" means that document which describes the duties, responsibilities and scope of practice of the physician assistant-certified as delegated by the supervising physician and approved by the board.~~

AUTH: 37-1-131, 37-20-201, 37-20-202, ~~37-20-203~~, MCA

IMP: 37-1-101, 37-20-202, 37-20-203, MCA

24.156.1604 TRAINING OF STUDENT PHYSICIAN ASSISTANTS

(1) remains the same.

(2) A physician assistant student must train under the supervision of a physician ~~who is licensed or a physician assistant-certified~~ assistant who is licensed in Montana.

(3) remains the same.

(a) be currently enrolled in a physician assistant training program accredited by the Accreditation Review Commission on Education for the Physician Assistant or if accreditation was granted before 2001, accredited by the American medical association Medical Association's committee Committee on allied health education and accreditation Allied Health Education and Accreditation, or its successor the Commission on Accreditation of Allied Health Education Programs; and

(b) remains the same.

AUTH: 37-20-202, MCA

IMP: 37-20-202, 37-20-402, MCA

24.156.1625 UNPROFESSIONAL CONDUCT (1) In addition to those forms of unprofessional conduct defined in 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 20, MCA:

~~(4) (a) Conviction~~ conviction, including conviction following a plea of nolo contendere, of an offense involving moral turpitude, whether misdemeanor or felony, and whether or not an appeal is pending;

~~(2) Fraud, misrepresentation, deception or concealment of a material fact in applying for or securing a license, license renewal, utilization plan or in taking an examination required for licensure; as used herein, "material" means any false or misleading statement or information;~~

~~(3) (b) Conduct~~ conduct likely to deceive, defraud or harm the public, including but not limited to practicing while subject to a physical or mental condition which renders the licensee unable to safely engage in the practice of medicine;

~~(4) (c) Making~~ making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment, or remedy prescribed by the licensee or at the licensee's direction in the treatment of a disease or other condition of the body or mind;

~~(5) (d) Resorting~~ resorting to fraud, misrepresentation, or deception in the examination or treatment of a person, or in billing, giving or receiving a fee related to professional services, or reporting to a person, company, institution or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72, MCA;

~~(6) Use of a false, fraudulent or deceptive statement, whether written or verbal, in connection with the physician assistant-certified's practice of medicine;~~

~~(7) Having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for disciplinary action under Title 37, chapter 20, MCA, or these rules; a certified copy of~~

the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;

(8) ~~(e)~~ Willful disobedience violation of any section in Title 37, chapter 20, MCA, and/or any rule adopted by the board to implement Title 37, chapters 1 or 20, MCA, any order of the board regarding enforcement of discipline of a licensee, or any term, condition or limitation imposed on the licensee in a utilization plan;

(9) ~~(f)~~ Habitual habitual intemperance or excessive use of an addictive drug, alcohol, or any other substance to the extent that the use impairs the user physically or mentally; this provision does not apply to a licensee who is maintaining an approved therapeutic regimen as described in 37-3-203, MCA;

(10) ~~(g)~~ Failing failing to furnish to the board or its investigators or representatives information legally requested by the board;

(11) ~~(h)~~ Failing to cooperate with a lawful investigation conducted by the board;

(12) ~~(i)~~ Failing failing to report to the board any adverse judgment, settlement or award arising from a medical liability claim or other unprofessional conduct;

(13) ~~(j)~~ Obtaining obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(14) ~~Abusive billing practices;~~

(15) ~~(k)~~ Commission commission of an act of sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine;

(16) ~~(l)~~ Administering administering, dispensing, prescribing, or ordering a controlled substance, as defined by the federal ~~food and drug administration~~ Food and Drug Administration or successors, ~~otherwise other~~ than in the course of legitimate or reputable professional practice;

(17) ~~(m)~~ Conviction conviction or violation of a federal or state law regulating the possession, distribution, or use of a controlled substance, as defined by the federal ~~food and drug administration~~ Food and Drug Administration or successors, whether or not an appeal is pending;

(18) ~~(n)~~ Testifying testifying in a legal proceeding on a contingency basis;

(19) ~~(o)~~ Conspiring conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;

(20) ~~(p)~~ Except except as provided in this subsection, practicing medicine as the partner, agent, or employee of, or in joint venture with, a person who does not hold a license to practice medicine within this state; however, this does not prohibit:

(a) through (c)(ii) remain the same but are renumbered (i) through (iii)(B).

(iii) ~~(C)~~ neither the physician nor the physician assistant-certified assistant may be required to refer any patient to a particular provider or supplier or take any other action that the physician or physician ~~assistant-certified~~ assistant determines not to be in the patient's best interest;

(21) ~~(q)~~ Failing failing to transfer pertinent and necessary medical records to another licensed health care provider, the patient or the patient's representative when requested to do so by the patient or the patient's legally designated representative, in accordance with Title 50, chapter 16, MCA;

~~(22) (r) Promoting promoting~~ the sale of services, goods, appliances or drugs in such a manner as to exploit the patient for the financial gain of the licensee or a third party;

~~(23) (s) Willfully willfully~~ harassing, abusing, or intimidating a patient, either physically or verbally;

~~(24) (t) Failing failing~~ to maintain a record for each patient which accurately reflects the evaluation, diagnosis, and treatment of the patient;

~~(25) (u) Failing failing~~ to exercise appropriate supervision over persons who provide health care under the supervision of the licensee;

~~(26) Failing to maintain certification by the national commission on certification of physician assistants (NCCPA);~~

~~(27) Any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct.~~

(v) acting in such a manner as to present a danger to public health or safety, or to any patient including, but not limited to, incompetence, negligence, or malpractice;

(w) having voluntarily relinquished or surrendered a professional or occupational license, certificate, or registration in this state, or in another state or jurisdiction;

(x) having withdrawn an application for licensure, certification, or registration while under investigation or prior to a determination of the completed application in this state, or in another state or jurisdiction;

(y) failing to furnish to the board or its designee information requested by the board;

(z) filing a complaint with, or providing information to, the board which the licensee knows, or ought to know, is false or misleading. This provision does not apply to any filing of a complaint or providing information to the board when done in good faith under 37-1-308, MCA;

(aa) commission of any act of sexual abuse, misconduct or exploitation by the licensee whether or not related to the practice;

(ab) falsifying and altering patient records, intentionally documenting patient records inaccurately, failing to appropriately and timely document patient records;

(ac) diversion of a medication for any purpose or a violation of state or federal laws governing the administration of medications;

(ad) failing to comply with any agreement with the board, required by the board, or with the endorsed professional assistance program contracted by the board, the licensee has entered into;

(ae) failing to submit to the board a completed supervision agreement prior to commencing physician assistant practice in the state of Montana;

(af) failing to maintain and/or provide copies on request, pursuant 37-1-301, MCA, of the physician assistant's current duties and delegation agreement; and

(ag) any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct.

AUTH: 37-1-319, 37-20-202, MCA

IMP: 37-1-319, 37-3-202, 37-20-201, 37-20-402, 37-20-403, MCA

5. The proposed new rules provide as follows:

NEW RULE I APPLICATION FOR PHYSICIAN ASSISTANT LICENSE

(1) An applicant for a physician assistant license shall submit an application on a form prescribed by the department. The application must be complete and accompanied by the appropriate fees and the following information and/or documentation:

- (a) applicant's current original unopened National Practitioner Data Bank (NPDB) self-query report;
- (b) applicant's professional education and work experience since completing physician assistant training; and
- (c) two written character references.

(2) Applicants licensed in another state or jurisdiction shall cause all states and jurisdictions in which the applicant holds or has ever held a license to submit a current verification of licensure directly to the board on behalf of the applicant.

(3) Applicants whose applications are received, processed, and determined to be incomplete will be sent a letter from the board office specifying the deficiencies, which may include but not be limited to appropriate fees, verifications, character references, and any other supplemental information the board or its designee deems appropriate. The incomplete application will be held for a period of one year at which time the application will be treated as an expired application and all fees will be forfeited. The applicant may correct any deficiencies, submit missing or additional information, and complete any requirements necessary to complete the application within one year from the date the initial application is received in the board office.

(4) The applicant may voluntarily withdraw the application prior to the one-year deadline set forth in (3) by submitting a request to withdrawal in writing to the board office. All application fees submitted will be forfeited.

(5) After withdrawal of an application, the applicant will be required to submit a new application, including supporting documentation and appropriate fees to begin the licensing and verification process again.

(6) Completed applications shall be reviewed by the board or its designee, which may request such additional information or clarification of information provided in the application as deemed reasonably necessary.

AUTH: 37-1-131, 37-20-202, MCA

IMP: 37-20-202, 37-20-203, 37-20-302, 37-20-402, MCA

NEW RULE II PHYSICIAN ASSISTANT FEES

(1) The following fees must be paid in connection with physician assistant licensure:

- | | |
|--|-------|
| (a) license application fee | \$325 |
| (b) 90-day temporary license fee | 100 |
| (c) active renewal fee (2006) | 100 |
| (d) active biennial renewal (2007) | 200 |
| (e) inactive renewal fee (2006) | 50 |
| (f) inactive biennial renewal fee (2007) | 100 |
| (g) supervision agreement fee | 25 |

(2) Licensees desiring to activate an inactive physician assistant license must contact the board and pay an activation fee of \$100 and affirm that they have a current NCCPA certification.

(3) All fees provided for in this rule are nonrefundable and are not prorated for portions of the licensing period.

AUTH: 37-1-134, 37-20-202, MCA

IMP: 37-1-134, MCA

REASON: The Board has determined it is reasonably necessary to adopt New Rule II instituting the proposed fee changes in order to comply with the provisions of 37-1-134, MCA, and ensure that the Board's fees associated with physician assistants remain commensurate with program costs. The Board is not increasing fees at this time, but is reducing fees in several instances. In addition, licensure fees for physician assistants are being adjusted as the Board moves toward biennial renewal periods. The Board is also amending fees to coincide with current Board processes regarding supervision plans and temporary licenses. Further, it is necessary to address terminology changes and both the inactive and active licensure of physician assistants pursuant to House Bill 737 of the 2005 Montana legislature. The proposed fee changes will result in an initial increase in revenue of \$13,120.00 between fiscal years 2006 and 2007, due to the adjustment to biennial renewals. By fiscal year 2008, revenue from physician assistant licensure is estimated to be \$45,020.00, compared to \$45,700.00 in fiscal year 2006. The Board estimates the fee changes will result in an aggregate increase in revenue of \$12,440.00 over the next two fiscal years. Approximately 230 persons will be affected by the proposed fee changes.

NEW RULE III PHYSICIAN ASSISTANT LICENSE RENEWAL

(1) Physician assistant licenses are issued on a biennial renewal cycle beginning January 1, 2007. For the renewal cycle in 2007, licensees whose licenses end in an odd number will renew for two years and pay the full renewal fee. Licensees whose licenses end in an even number will renew for one year and pay half of the renewal fee.

(2) Except as provided in (3), to renew an active physician assistant license, the licensee shall:

(a) submit a completed license renewal application through electronic means or on a form prescribed and supplied by the department;

(b) affirm that the physician assistant possesses a current National Commission on the Certification of Physician Assistants (NCCPA) certification;

(c) self report any pending complaints or imposed disciplinary action or sanctions taken by another jurisdiction;

(d) provide current information regarding name and address changes; and

(e) submit payment of the renewal fee set in [NEW RULE II].

(3) Inactive licensees shall comply with (2)(a), (c), (d), and (e) of this rule to renew an inactive license.

(4) Incomplete renewal applications will be returned to the licensee and will not be considered received by the board.

(5) The board shall conduct a random audit of NCCPA certification following each renewal period.

AUTH: 37-1-131, 37-20-202, MCA

IMP: 37-1-141, 37-20-202, 37-20-203, 37-20-302, 37-20-402, MCA

NEW RULE IV OBLIGATION TO REPORT TO BOARD (1) A physician assistant shall report to the board within three months from the date of a final judgment, order, or agency action, all information related to malpractice, misconduct, criminal, or disciplinary action in which the physician assistant or the physician assistant's supervisor, based on the physician assistant's conduct, is a named party.

(2) A physician assistant shall, within ten days of receipt of a complaint from the board, provide the board with the name of the supervising physician who is responsible under the supervision agreement to which the complaint is related.

(3) A physician assistant with suspected or known impairment shall self-report to the board. In lieu of reporting to the board, the physician assistant may self-report to the board-endorsed professional assistance program.

(4) A physician assistant is obligated to report suspected or known impairment of other health care providers to the appropriate licensing board, agency, or in lieu of the board or agency, may report to the endorsed professional assistance program.

AUTH: 37-1-131, 37-1-319, 37-20-202, MCA

IMP: 37-1-131, 37-3-401, 37-3-405, MCA

NEW RULE V SUPERVISION OF PHYSICIAN ASSISTANT

(1) A supervising physician may provide the following types of supervision to a physician assistant:

- (a) direct supervision;
- (b) onsite supervision; or
- (c) general supervision.

(2) The supervising physician shall meet face to face with each physician assistant supervised a minimum of once a month for the purposes of discussion, education, and training, to include but not be limited to practice issues, patient care, and chart reviews in accordance with [NEW RULE VI].

(3) A supervising physician may supervise more than one physician assistant if the supervising physician:

- (a) agrees to supervise more than one physician assistant by signing and filing multiple supervision agreements with the board;
- (b) provides appropriate and real time means of communication or back up supervision for the physician assistants;
- (c) determines the appropriate level supervision (direct, onsite, or general), based on the physician assistant's education, training, and experience; and
- (d) assumes professional and legal responsibility for all physician assistants under the supervising physician's supervision regardless of the varying types of supervision.

AUTH: 37-20-202, MCA

IMP: 37-20-101, 37-20-301, 37-20-403, MCA

NEW RULE VI CHART REVIEW (1) The supervising physician shall review a minimum of 10% of the physician assistant charts on at least a monthly basis.

(2) Chart review for a physician assistant having less than one year of full time practice experience from the date of initial licensure must be 100% for the first three months of practice, and then may be reduced to not less than 25% for the next three months, on a monthly basis, for each supervision agreement.

(3) The supervising physician shall countersign and date all written entries that have been chart reviewed and shall document any amendments, modifications, or guidance provided.

(4) Chart review for a physician assistant who has been issued a probationary license must be 100% on a monthly basis, unless the board terminates the probationary period.

AUTH: 37-20-202, MCA

IMP: 37-20-101, 37-20-301, MCA

NEW RULE VII PATIENT RIGHTS (1) For the purposes of implementing this chapter, if the patient is being medically cared for or treated by a physician assistant:

(a) The patient may request to be treated or seen by the supervising physician in lieu of the physician assistant, if the supervising physician is available.

(b) If the supervising physician is not available, the patient must be given an explanation for the unavailability of the supervising physician and the patient's request and explanation must be documented in the patient's chart at the time of the request. The patient must also be given the opportunity to be treated by the supervising physician when the supervising physician is available.

(c) The physician assistant shall report to the supervising physician the patient's request to be seen or treated by the supervising physician.

AUTH: 37-20-202, MCA

IMP: 37-20-101, 37-20-301, MCA

6. The rules proposed to be repealed are as follows:

24.156.1603 QUALIFICATIONS OF PHYSICIAN ASSISTANT-CERTIFIED
found at ARM page 24-15352.

AUTH: 37-20-201, MCA

IMP: 37-20-101, 37-20-402, MCA

24.156.1605 FEES found at ARM page 24-15353.

AUTH: 37-1-134, 37-20-201, MCA

IMP: 37-1-134, 37-20-203, 37-20-302, MCA

24.156.1606 APPLICATION found at ARM page 24-15354.

AUTH: 37-20-201, MCA

IMP: 37-20-101, 37-20-203, 37-20-301, 37-20-402, MCA

24.156.1607 TEMPORARY APPROVAL found at ARM page 24-15355.

AUTH: 37-20-201, MCA

IMP: 37-20-203, 37-20-301, MCA

24.156.1608 SCOPE OF PRACTICE found at ARM page 24-15356.

AUTH: 37-20-202, MCA

IMP: 37-20-301, MCA

24.156.1609 PRESCRIBING/DISPENSING AUTHORITY found at ARM page 24-15356.

AUTH: 37-20-201, MCA

IMP: 37-20-404, MCA

24.156.1610 UTILIZATION PLAN found at ARM page 23-15356.

AUTH: 37-20-201, MCA

IMP: 37-20-301, MCA

24.156.1611 UTILIZATION PLAN - TERMINATION AND TRANSFER found at ARM page 24-15357.

AUTH: 37-20-201, MCA

IMP: 37-20-202, MCA

24.156.1612 PROHIBITIONS found at ARM page 24-15357.

AUTH: 37-20-201, MCA

IMP: 37-20-202, MCA

24.156.1613 PROTOCOL found at ARM page 24-15358.

AUTH: 37-20-201, MCA

IMP: 37-20-202, 37-20-403, MCA

24.156.1614 SUPERVISION OF MORE THAN ONE PHYSICIAN ASSISTANT-CERTIFIED found at ARM page 24-15358.

AUTH: 37-20-201, 37-20-202, MCA

IMP: 37-20-202, MCA

24.156.1615 INFORMED CONSENT found at ARM page 24-15358.

AUTH: 37-20-201, MCA

IMP: 37-20-202, 37-20-203, MCA

7. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdmed@mt.gov, and must be received no later than 5:00 p.m., March 31, 2006.

8. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at www.medicalboard.mt.gov. The Department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

9. The Board of Medical Examiners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Medical Examiners administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdmed@mt.gov, or made by completing a request form at any rules hearing held by the agency.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

11. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS
MICHAEL D. LAPAN, DPM, PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 13, 2006